



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 422 OF 2015

ROSEMARY MEYOCLAIMANT

v

BOARD OF GOVERNORS,

TOM MBOYA LABOUR COLLEGE.....RESPONDENT

JUDGMENT

1. Rosemary Meyo (the Claimant) was offered employment as Principal of Tom Mboya Labour College by the Central Organisation of Trade Unions (COTU) through a letter dated 28 May 2013.
2. Barely a year later, on 7 April 2014, COTU issued a show-cause letter to the Claimant to explain why disciplinary action should not be taken against her.
3. The allegations were unilaterally using money allocated for construction of a fence to pay staff salaries, changing the contractor given the job of fencing and unsatisfactory quality of board minutes.
4. The Claimant responded on 16 April 2014.
5. On 15 May 2015, the Secretary-General of COTU issued a warning to the Claimant, and the reason was absence from the College that morning. The Claimant explained the absence through a letter dated 18 May 2015.
6. COTU issued another show-cause to the Claimant on 8 August 2015, and 6 allegations were listed to wit:
 - (i) Failure to implement Board resolutions.
 - (ii) Delayed preparation and circulation of Board papers.
 - (iii) Delayed preparation and circulation of Board minutes.
 - (iv) Conducting unauthorised recruitment of staff.
 - (v) Late submission of monthly management reports to the Board.
 - (vi) Poor public relations with customers.
7. The Claimant responded on 19 August 2015, and on 24 August 2015, she was notified of the termination of her services.
8. The Claimant was aggrieved, and on 7 December 2015, she sued the Board of Governors, Tom Mboya Labour College (the Respondent), alleging that the termination of service was unfair because she was not accorded a fair hearing. She also alleged that no reasons were given for the decision.
9. The Respondent filed a Response on 26 January 2016 contending that the termination of the Claimant's employment was lawful.
10. The Cause was heard on 21 March 2019 when the Claimant and Respondent's acting Principal testified.

11. The Claimant filed her submissions on 4 March 2020, while the Respondent filed its submissions on 25 February 2020.

12. The Court has considered the pleadings, evidence and submissions.

Unfair termination of employment

Procedural fairness

13. In paragraph 21 of its submissions, the Respondent asserted that the case of the Claimant was one of summary dismissal.

14. In terms of section 41(2) of the Employment Act, 2007, it is obligatory that the employer must afford the employee an oral hearing in cases of summary dismissal.

15. The Claimant was issued with a show-cause dated 8 August 2015. The show-cause outlined 6 allegations, and the Claimant was requested to respond in writing within 72 hours.

16. Since the Claimant was out of the country, she only responded on 19 August 2015 upon returning to the country.

17. Despite informing the Claimant of the allegations to respond to and requesting her to make a written response, the Respondent failed to afford the Claimant an opportunity to make oral representations as demanded by section 41(2) of the Employment Act, 2007.

18. For that failure, the Court finds that the termination of the Claimant's employment was procedurally unfair.

Substantive fairness

19. Sections 43 and 45 of the Employment Act, 2007 has placed an obligation on the employer to not only prove the reasons for terminating an employment contract but to prove that the reasons are valid and fair.

20. The Respondent called its then acting Principal to discharge that burden.

21. In an endeavour to prove the reasons for terminating the Claimant's employment, the witness produced copies of minutes of meetings the Respondent's Board held on 6 August 2015 and 20 August 2015.

22. With due respect to the Respondent, the minutes only go to show that the Board discussed the Claimant's performance and conduct, but they do not by themselves prove that the Claimant failed to implement Board resolutions; delayed preparation and circulation of Board papers; recruited staff without authority; submitted monthly management reports late or had poor public relations with customers.

23. Perhaps a member of the Board would have been a more competent witness to enable the Respondent to discharge the burden of proving the reasons for the termination of the Claimant's employment.

24. The Court finds that the Respondent did not discharge the burden imposed on it by sections 43 and 45 of the Employment Act, 2007.

Compensation

25. The Claimant served the Respondent for about 1-year, and in consideration of the length of service, the Court is of the view that the equivalent of 1-month gross salary would be appropriate as compensation (monthly salary was Kshs 100,000/-).

Salary in lieu of notice

26. The Claimant did not lay an evidential or contractual basis for claiming 3-months' salary in lieu of notice, and since the Respondent offered the equivalent of 1-month salary in lieu of time in line with section 35(1)(c) of the Employment Act, 2007, the Court declines further relief under this head of the claim (if the amount was not paid, it should be paid).

Gratuity

27. The Claimant sought Kshs 148,000/- on account of gratuity. She did not provide a contractual or evidential foundation to the head of the claim, and again, relief is denied.

Salary arrears

28. No contractual or evidential basis for this relief was provided.

Outstanding leave

29. The Respondent indicated that the Claimant would be paid outstanding leave days without computing the amount, and therefore the Court will allow this head of the claim.

30. The Respondent to compute and pay the same if it was not paid.

Conclusion and Orders

31. The Court finds and declares that the termination of the Claimant's employment was unfair and awards her:

(i) Compensation **Kshs 100,000/-**

32. The Respondent should pay the Claimant the dues set out in the termination letter together with the award herein if the same has not been paid.

33. Claimant to have costs and interest at court rates on the decretal amount from the date of judgment.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 26TH DAY OF MAY 2021.

RADIDO STEPHEN,

MCIARB JUDGE

Appearances

For Claimant Otieno, Yogo, Ojuro & Co. Advocates

For Respondent J. A. Guserwa & Co. Advocates

Court Assistant Chrispo Aura